

they enjoy an express easement, such issue is not properly before this Court. Similarly, the defendant's arguments associated with a necessary easement are not properly before the Court.

Accordingly, based on the defendant's motion for partial summary judgment regarding the issue of a prescriptive easement and the plaintiffs' concession no prescriptive easement exists, the defendant's motion will be granted. Therefore, the issue of whether a prescriptive easement exists will not be an issue at trial in this matter. Upon consideration,

IT IS ORDERED:

The defendant's Motion in Limine or For Partial Summary Judgment (Filing No. 62) is granted. No issue remains for trial regarding whether the plaintiffs claim a prescriptive easement exists over the subject federal land.

DATED this 11th day of May, 2005.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge